

1 H.440

2 Introduced by Representatives Gage of Rutland City, Gamache of Swanton,

3 Higley of Lowell, Savage of Swanton, and Strong of Albany

4 Referred to Committee on

5 Date:

6 Subject: Health; abortion; parental notification

7 Statement of purpose of bill as introduced: This bill proposes to require that a
8 parent or guardian of an unemancipated minor receive written notice at least
9 48 hours before an abortion is performed on the minor, unless the abortion is
10 necessary to prevent the minor's death or serious bodily injury. The bill also
11 requires health care providers to provide pregnancy information and
12 counseling to minors prior to providing services related to pregnancy.

13 An act relating to requiring parental notification prior to performing an
14 abortion on an unemancipated minor

15 It is hereby enacted by the General Assembly of the State of Vermont:

16 Sec. 1. 18 V.S.A. chapter 115 is added to read:

17 CHAPTER 115. PARENTAL NOTIFICATION OF ABORTION

18 § 5293. DEFINITIONS

19 As used in this chapter:

1 (1) “Abortion” means the use of any means to terminate the pregnancy
2 of a female known to be pregnant with knowledge that the termination with
3 those means will, with reasonable likelihood, cause the death of the fetus.

4 (2) “Fetus” means any individual human organism from fertilization
5 until birth.

6 (3) “Health care provider” means any health care professional who is
7 authorized to perform an abortion and is proposing to provide an abortion.

8 § 5294. NOTIFICATION

9 (a) No abortion shall be performed upon an unemancipated minor or upon a
10 minor for whom a guardian has been appointed, according to 14 V.S.A.
11 § 2645(1)–(4), until 48 hours after written notification of the pending abortion
12 has been delivered to at least one parent of the unemancipated minor or to the
13 guardian of the minor.

14 (b) The notification required by this section shall be delivered at the
15 parent’s or guardian’s usual place of abode, if possible; otherwise, at any other
16 appropriate place, and shall be:

17 (1) Personally delivered to the parent or guardian by the attending health
18 care provider proposing to provide the abortion or an agent of the health care
19 provider.

1 (2) Sent to the parent or guardian by certified mail, return receipt
2 requested, delivery restricted to the addressee. Time of delivery shall be
3 deemed to occur at the time the return receipt is signed by the recipient.

4 § 5295. LIMITATIONS

5 (a) Notification required under section 5294 of this title shall not be
6 required if:

7 (1) The attending health care provider proposing to provide the abortion
8 certifies in the minor's medical record that the abortion is necessary to prevent
9 the minor's death or serious physical injury to the minor, and there is
10 insufficient time to provide the required notification to a parent or guardian.

11 (2) The parent or guardian entitled to notification certifies in writing,
12 with proof of identification, that he or she has been notified of the minor's
13 intent to have an abortion.

14 (3) A court authorizes the health care provider to proceed with the
15 abortion pursuant to the following procedure:

16 (A) A minor, with the assistance of her health care provider and
17 without notification to a parent or guardian, may petition the Probate Division
18 for a waiver of the parental notification requirement. The petition shall be in
19 simple form prescribed by rules adopted by the Vermont Supreme Court, and
20 shall include a statement that the petitioner is pregnant, that notification has not

1 been waived, and that the minor has not petitioned any other court for a waiver
2 to the notification requirement relating to this pregnancy.

3 (B) The Probate Division shall forthwith appoint an attorney and an
4 appropriately trained guardian ad litem for the minor.

5 (C) The Probate Division shall hold an ex parte hearing on a petition
6 filed under this subdivision (3), which may be in a setting other than a
7 traditional courtroom. The hearing shall be informal and closed to the public.
8 Strict rules of evidence shall not apply. Witnesses shall be sworn, and the
9 testimony shall be electronically recorded. A copy of the recording shall be
10 made available to the minor without cost.

11 (D) Probate Division proceedings under this subdivision (3) shall be
12 given precedence over other pending matters to the extent necessary to ensure
13 that the Court reaches a decision promptly and in the best interests of the
14 minor.

15 (E) The Probate Division shall hear the matter and issue a written
16 entry order within three business days after the petition is filed, except that the
17 three-business-day limitation may be extended at the request of the minor. A
18 certified copy of the Court's written entry order shall be sent to the minor's
19 health care provider. If the Court fails to rule within three business days of
20 receiving the petition or fails to rule by the expiration of any extension, the

1 petition is granted. A certified copy of the automatic waiver of parental
2 notification shall be delivered forthwith to the minor's health care provider.

3 (F) The Probate Division shall issue an order authorizing the minor to
4 consent to an abortion without the notification of a parent or guardian if the
5 Court, or a judicial officer designated by the Court, finds any of the following
6 by clear and convincing evidence:

7 (i) upon an evaluation of relevant factors, including a minor's age,
8 intelligence, reasoning ability, and emotional state, the minor is sufficiently
9 mature to decide whether to terminate her pregnancy and provide for her own
10 post-abortion care, and understands the nature, risks, and consequences of the
11 procedure to be performed;

12 (ii) notification would place the minor at substantial risk of being
13 physically or emotionally harmed by a parent or guardian;

14 (iii) notification would cause irreparable harm to the minor's
15 relationship with her parent or guardian; or

16 (iv) notification is not in the best interests of the minor.

17 (b) All records of proceedings that take place under this section shall
18 remain confidential and be placed under seal. Any information that is sent to
19 the minor's health care provider in accordance with this section shall become
20 part of the minor's confidential medical record.

1 (c) For purposes of this section, any Probate Judge who grants a waiver of
2 notification based upon a decision that the pregnancy is a result of abuse,
3 neglect, or the commission of a crime against the minor, or any guardian ad
4 litem who has a suspicion that the pregnancy is a result of abuse, neglect, or
5 the commission of a crime against the minor, shall report or cause a report to
6 be made within 24 hours after the decision, in accordance with the provisions
7 of 33 V.S.A. §§ 4913 and 4914.

8 § 5296. APPEAL

9 (a) An expedited, confidential appeal to the presiding judge of the Family
10 Division in the unit in which the Probate proceeding occurred, pursuant to
11 section 5295 of this title, shall be available to any minor for whom the Probate
12 Division denies a waiver of notification.

13 (b) Notice of an appeal must be filed in the Family Division within 11 days
14 of the Probate decision.

15 (c) Within three business days of filing the notice of appeal, the presiding
16 judge of the Family Division shall conduct a hearing de novo and issue a
17 decision, including findings of fact and conclusions of law, on this matter. The
18 three-business-day limitation may be extended at the request of the minor.

19 (d) The presiding judge of the Family Division shall hold an ex parte
20 hearing on a notice of appeal filed under this section, which may be in a setting
21 other than a traditional courtroom. The hearing shall be informal and closed to

1 the public. Strict rules of evidence shall not apply. Witnesses shall be sworn,
2 and the testimony shall be electronically recorded. A copy of the recording
3 shall be made available to the minor without cost.

4 (e) The Family Division under this section shall be given precedence over
5 other pending matters to the extent necessary to ensure that the Court reaches a
6 decision promptly and in the best interests of the minor.

7 (f) A certified copy of the Family Division's written decision shall be sent
8 to the minor's health care provider. If the Family Division fails to rule within
9 three business days of receiving the notice of appeal or fails to rule by the
10 expiration of any extension, the request for a waiver of notification is granted.

11 A certified copy of the automatic waiver of parental notification shall be
12 delivered forthwith to the minor's health care provider.

13 (g) The presiding judge of the Family Division shall issue an order
14 authorizing the minor to consent to an abortion without the notification of a
15 parent or guardian if the Court finds, by clear and convincing evidence, that
16 any of the requirements of subdivision 5295(a)(3)(F) of this chapter have
17 been met.

18 (h) All records of proceedings that take place under this section shall
19 remain confidential and be placed under seal. Any information that is sent to
20 the minor's health care provider in accordance with this section shall become
21 part of the minor's confidential medical record.

1 (18) Appeals from the Probate Division regarding a waiver of parental
2 notification prior to performing an abortion on an unemancipated minor.

3 Sec. 5. 18 V.S.A. chapter 42B is added to read:

4 CHAPTER 42B. PREGNANCY INFORMATION

5 AND COUNSELING FOR MINORS

6 § 1881. PROVISION OF INFORMATION AND COUNSELING

7 Prior to providing services related to pregnancy, a health care provider, as
8 defined in subdivision 9432(8) of this title, or a mental health professional, as
9 defined in subdivision 7101(13) of this title, shall, to the extent already
10 required by the providers' code of professional conduct, provide information
11 and counseling in a manner and language that will be understood by the minor,
12 including:

13 (1) An explanation that the information is being given objectively, and
14 is not intended to coerce, persuade, or induce the minor to make a particular
15 decision.

16 (2) An explanation that the minor may withdraw or reconsider a
17 decision related to her pregnancy, within certain limits, which shall also be
18 explained to her.

19 (3) An explanation to the minor of the options available for managing
20 pregnancy decisions and follow-up care.

1 (4) An explanation that public and private agencies are available to
2 assist the minor with services related to her pregnancy, and that a list of these
3 agencies and the services available from each will be provided if the minor
4 requests.

5 (5) A discussion of the possibility of involving the minor's parents,
6 guardian, or other adult family members in the minor's reproductive health
7 care decision making.

8 (6) An adequate opportunity for the minor to ask questions and receive
9 answers concerning reproductive health care. The health care provider and
10 mental health professional shall indicate where the minor can receive the
11 information requested if he or she, or both, are unable to provide such
12 information.

13 § 1882. MEDICAL EMERGENCY EXCEPTION

14 Information and counseling required under section 1881 of this title shall
15 not be required if a health care provider determines that a medical emergency
16 exists and complicates the pregnancy or the health, safety, or well-being of the
17 minor to the extent that an immediate abortion is necessary.

18 Sec. 6. EFFECTIVE DATE

19 This act shall take effect on July 1, 2015.